

ESTTA Tracking number: **ESTTA607432**

Filing date: **06/02/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Defendant Quentin Davis
Correspondence Address	QUENTIN DAVIS PO BOX 47893 TAMPA, FL 33646 UNITED STATES nevisbaby@hotmail.com, ThaRilest@yahoo.com
Submission	Answer
Filer's Name	Quentin Davis
Filer's e-mail	nevisbaby@hotmail.com, tharilest@yahoo.com
Signature	/Quentin Davis/
Date	06/02/2014
Attachments	REGISTRANTS RESPONSE TO PLAINTIFFS 5_19_2014 REPLY.pdf(450502 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF REGISTRATION NO.: **4,106,459**

For the mark **LEGENDARY**

Date of Issue: February 28, 2012

<hr/>)	
LEGEND PICTURES, LLC,)	
)	
Plaintiff,)	
)	
v.)	Proceeding No. <u>92056168</u>
)	
)	
QUENTIN DAVIS)	
)	
Registrant.)	
<hr/>)	

REGISTRANT’S RESPONSE TO PLAINTIFF’S 5/19/2014 REPLY

On May 19th 2014, Legend Pictures LLC , the Plaintiff in Proceeding 92056168, did submit a reply in further support of its motion for sanctions against the Registrant. The Registrant does hereby respond.

The Plaintiff seeks sanctions against the Registrant for accusations including alleged intentional hindrance of discovery. The Plaintiff has noted the Registrant’s lack of service of a privilege log (an issue of which the Registrant has repeatedly informed the Plaintiff of Registrant’s previous unfamiliarity with) and has also, on several occasions, mentioned its displeasure with the timeliness of the Registrant’s responses. The plaintiff has entered all of these allegations as consideration for its requested sanctions against the Registrant.

Most recently (14 days ago [May 19, 2014]) the Plaintiff submitted a privilege log to the Registrant.

The Registrant will ask the Board to note that the Plaintiff's privilege log was served **AFTER** the Plaintiff's Motions for Sanctions against the Registrant, for the Registrant's allegedly intentional exclusion of a privilege log. At the time of the Plaintiff's motions, the Plaintiff was guilty of the **EXACT** misconduct it alleged against the Registrant.

The Registrant will ask the Board to note that the Plaintiff has made several made several mentions of the Registrant's alleged lack of timeliness as grounds for sanctions against the Registrant yet **THE PLAINTIFF'S PRIVILEGE LOG WAS DUE 1 (ONE) FULL YEAR AGO.**

The Plaintiff continues to contradict itself in this matter...

“Davis accusations of “unclean hands” must fail. Davis never before requested a privilege log from Petitioner. Nor did Davis once complain about the lack of one.”

(Please see page 2, last paragraph of Plaintiff's 5/19/2014 reply - TTAB Document #47)

The Plaintiff has offered the Board this enervate excuse for its misconduct yet cited Fed. R. Civ. P. 26(b)(5) in its 3/10/2014 motion. The civil procedure which the Plaintiff did itself cite reveals:

(A) Information Withheld. **When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection** as trial-preparation material, **the party must:**

(i) expressly make the claim; and

(ii) **describe the nature of the documents, communications, or tangible things not produced or disclosed**—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(underline and bold added by Registrant for specific emphasis)

The Plaintiff is fully aware that the Registrant is not required to request a privilege log from the Plaintiff for any privileges the Plaintiff may claim during discovery. Furthermore, the Plaintiff is fully aware that the absence of request for a privilege log is not acceptable reason for the Plaintiff's willful exclusion and does not excuse the Plaintiff's misconduct. The Plaintiff has severely impeded discovery by failing to uphold its responsibilities and would seek sanctions against the Registrant for allegations of the same. The Plaintiff has committed willful misconduct by excluding any log whatsoever for at least ten (10) claimed privileges and has compounded this misconduct by seeking sanctions against the respondent for negligence of which the Plaintiff was itself knowingly guilty of. **Indeed, the Plaintiff is guilty of unclean hands in this proceeding.**

While the Plaintiff does attempt to propound its arguments against the Registrant and coerce the Board in its favor, **preceding decision and civil procedure relevant to the Plaintiff's unclean hands** has made the necessary actions in this matter quite clear.

(1) he who seeks equity must do equity; and (2) he who comes into equity must come with clean hands.

See, e.g., 27A Am. Jur. 2d, Equity §§119, 126 (1996)

[unclean hands comprises] “a self-imposed ordinance that **closes the doors of a court of equity to one tainted with inequitableness** or bad faith relative to the matter in which he seeks relief, **however improper may have been the behavior of the defendant.**”

Precision Instrument Mfg. Co. v. Automotive Maintenance Mach.Co., 324 U.S. 806, 814–15 (1945)

*“It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; **any really unconscientious conduct**, connected with the controversy to which he is a party, **will repel him from the forum** whose very foundation is good conscience.”;*

Mas v. Coca-Cola Co., 163 F.2d at 507–8.

Moreover, **the doctrine does not call for a balancing of the misconduct on both sides of the case**. Rather, **the conduct of the party seeking relief** and its effect on the judicial process **are the sole considerations**.

E.g. , Alcatel USA, Inc. v. DGI Techs., Inc., 166 F.3d 772, 794 n.92 (5th Cir. 1999);

Mas, 163 F.2d at 510–11; United Cities Gas Co. v. Brock Exploration Co., 995 F.Supp. 1284, 1296 n.11 (D. Kan. 1998).

The Court has made it very clear that all parties which seek equity must themselves do equity and must come with clean hands without regard or measure to the allegations and pretensions made against the defending party.

“the doctrine does not call for a balancing of the misconduct on both sides of the case... the conduct of the party seeking relief [is] the sole consideration.”

Due to its compounding misconduct, the Plaintiff is **entirely** barred from receiving sanctions in this matter.

The Registrant would like to inform the Board for the record, that I have served extensively viable discovery content upon the Plaintiff, content of which the Plaintiff apparently does not desire to contest at trial. In past references to the Board concerning this content, the Plaintiff has purposely chosen to omit the existence of some content and has intentionally misconstrued the nature of others. The Registrant does believe this to be the true motivation behind the Plaintiff's urgency for sanctions.

While the issues in this paragraph are not of absolute significance to the immediate matter, the Registrant may not allow the record to go undisputed. The Plaintiff has made comments concerning my pro se status and how “one cannot have it both ways” concerning privileges including work product. The Plaintiff is or should be fully knowledgeable that one is not required to be represented by an attorney in order to be compliant with these privileges. The Registrant has (re)-informed the Plaintiff of this in the Registrant's Response to Plaintiff's 4/4/2014 Reply (TTAB Document #42, first page footnote). I have been pro-se throughout the entirety of this proceeding.

CONCLUSION

While the Plaintiff did finally serve a privilege log to the Registrant, the Registrant will respectfully ask the Board to note some very important issues;

- 1) The Plaintiff's privilege log was served a full year late
- 2) The Plaintiff neglected to serve the privilege log during any period of discovery, thereby rendering the associated claims unable to be assessed
- 3) The Plaintiff sought punishment in the form of sanctions against the Registrant for exclusion of a privilege log, while the Plaintiff itself was knowingly guilty of the very same offense
- 4) The Plaintiff chose only to serve a privilege log to the Registrant **AFTER the Plaintiff's unclean hands had been exposed to the Board**

The Plaintiff's privilege log was served to the Registrant a full year late. This service does not excuse the Plaintiff of misconduct not only due to the exorbitant untimeliness nor the fact that the log was not delivered during any discovery period that may allow the respondent to substantiate the associated claims, but also due to the fact that the Plaintiff willfully attempted to evade duties of which it is fully familiar, while seeking sanctions against the respondent for the alleged neglect of those very duties. This behavior is completely vile, dishonest, unethical, and does severely undermine the just intentions of civil procedure. **Indeed, the Plaintiff is guilty of unclean hands in this proceeding.**

It is for the aforementioned reasons and in the absolute interest and requirement of justice that the Registrant does respectfully implore the Board to deny **all** sanctions and related requests made on behalf of the Plaintiff.

Respectfully Submitted,

/Quentin Davis/
Quentin Davis – Registrant
P.O. Box 47893
Tampa, Florida 33646

June 2, 2014
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June 2014, a true and complete copy of the foregoing **REGISTRANT'S RESPONSE TO PLAINTIFF'S 5/19/2014 REPLY** was served to Plaintiff via electronic mail to:

Carla Calcagno at e-mail addresses:

carla.calcagno@calcagnolaw.com

and

cccalcagno@gmail.com

Calcagno Law
1250 24th Street NW, Suite 300
Washington, DC 20037

/Gloria Walters/

Gloria Walters
Administrative Assistant to the Registrant
P.O. Box 47893
Tampa, Florida 33646